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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 ROBERT BONDS,

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11 Petitioner,

12 v.

13 ELDON VAIL, *et al.*,

14 Respondents.

No. C09-5239 RJB/KLS

ORDER ADOPTING REPORT AND
RECOMMENDATION AND GRANTING
CERTIFICATE OF APPEALABILITY

15 The Court, having reviewed the petition for writ of habeas corpus, the response, the
16 Report and Recommendation of Magistrate Judge Karen L. Strombom (Dkt. 13), objections to
17 the Report and Recommendation (Dkt. 14), and the remaining record, does hereby find and
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19 ORDER:

- 20 (1) The Court **ADOPTS** the Report and Recommendation (Dkt. 13). A de novo
21 review of the record shows that petitioner's claims are unexhausted and
22 procedurally barred. The court agrees with the thorough and careful analysis set
23 forth in the Report and Recommendation.
- 24 (2) The petition for writ of habeas corpus (Dkt.1) is **DISMISSED WITH**
25 **PREJUDICE.**
- 26 (3) In the event that petitioner appeals the dismissal of the petition, the court must
consider whether to grant or deny the petitioner a Certificate of Appealability. *See*
28 U.S.C. 2253(c)(3). The district court should grant an application for a
Certificate of Appealability only if the petitioner makes a "substantial showing of
the denial of a constitutional right." 28 U.S.C. § 2253(c)(3). To obtain a

ORDER ADOPTING REPORT AND RECOMMENDATION - 1

1 Certificate of Appealability under 28 U.S.C. § 2253(c), a habeas petitioner must
2 make a showing that reasonable jurists could debate whether, or agree that, the
3 petition should have been resolved in a different manner or that the issues
4 presented were adequate to deserve encouragement to proceed further. *Slack v.*
5 *McDaniel*, 120 S.Ct. 1595, 1603-04 (2000) (quoting *Barefoot v. Estelle*, 463 U.S.
6 880, 893 n.4 (1983)). In this case, the petition is being dismissed as unexhausted
7 and procedurally barred. However, a review of the record shows that the issue of
8 exhaustion of petitioner's two habeas claims is adequate to deserve
9 encouragement to proceed further. Accordingly, a Certificate of Appealability is
10 **GRANTED** on the following issue: Did petitioner exhaust his claim of
11 ineffective assistance on appeal for appellate counsel's failure to raise a
12 confrontation claim and a public trial claim?

- 13 (4) The Clerk is directed to send copies of this Order to Petitioner, counsel for
14 Respondent and to the Hon. Karen L. Strombom.

15 DATED this 4th day of November, 2009.

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ROBERT J. BRYAN
United States District Judge